

By: Kolkhorst

H.B. No. 3201

Substitute the following for H.B. No. 3201:

By: Laubenberg

C.S.H.B. No. 3201

A BILL TO BE ENTITLED

AN ACT

relating to the practice of dentistry; imposing surcharges and fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 254.004, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The board shall collect an additional \$80 surcharge for each of the following fees:

(1) the fee for the issuance of a license; and

(2) the fee for the renewal of a license.

(d) The board shall deposit each surcharge collected to the credit of the dental public assurance account. The dental public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including an expert panel.

SECTION 2. Section 254.006(b), Occupations Code, is amended to read as follows:

(b) Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder ~~[and shall be divulged only~~

~~to the persons investigated at the completion of the investigation]~~. The board may share investigation files and other

records with another state regulatory agency or a local, state, or federal law enforcement agency.

1 SECTION 3. Sections 255.006(a) and (d-1), Occupations Code,
2 are amended to read as follows:

3 (a) A complaint received under this chapter must be filed
4 with and reviewed by the board to determine jurisdiction. If the
5 board has jurisdiction, the board shall complete a preliminary
6 investigation of the complaint not later than the 45th day after the
7 date of receiving [~~investigate the complaint to determine the facts~~
8 ~~concerning~~] the complaint. The board shall first determine whether
9 the license holder constitutes a continuing threat to the public
10 welfare. On completion of the preliminary investigation, the board
11 shall determine whether to officially proceed on the complaint. If
12 the board fails to complete the preliminary investigation in the
13 time required by this subsection, the board's official
14 investigation of the complaint is considered to commence on that
15 date.

16 (d-1) Procedures established under Subsection (d)(6) must:

17 (1) [~~require a board employee to consult with a~~
18 ~~dentist member of the board before dismissing a complaint relating~~
19 ~~to patient morbidity, professional conduct, or quality of care,~~

20 [~~2~~] ensure that the decision to dismiss a complaint
21 is made with the appropriate level of review and necessary
22 expertise and experience; and

23 (2) [~~3~~] require the dismissal of a complaint to be
24 reported to the board at a public meeting of the board.

25 SECTION 4. Chapter 255, Occupations Code, is amended by
26 adding Sections 255.0065, 255.0066, and 255.0067 to read as
27 follows:

1 Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) The board
2 by rule may provide for expert panels appointed by the board to
3 assist with complaints and investigations relating to professional
4 competency by acting as expert dentist and dental hygienist
5 reviewers.

6 (b) Each member of the expert dentist panel must be licensed
7 to practice dentistry in this state. Each member of the expert
8 dentist hygienist panel must be licensed to practice dental hygiene
9 in this state.

10 (c) The rules adopted under this section must include
11 provisions governing the composition of the panel, qualifications
12 for membership on the panel, length of time a member may serve on
13 the panel, grounds for removal from the panel, the avoidance of
14 conflicts of interest, including situations in which the affected
15 license holder and the panel member live or work in the same
16 geographical area or are competitors, and the duties to be
17 performed by the panel.

18 (d) The board's rules governing grounds for removal from the
19 panel must include providing for the removal of a panel member who
20 is repeatedly delinquent in reviewing complaints and in submitting
21 reports to the board.

22 Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) If the
23 preliminary investigation under Section 255.006(a) indicates that
24 an act by a license holder falls below an acceptable standard of
25 care, the complaint shall be reviewed by an expert panel authorized
26 under Section 255.0065 consisting of license holders who practice
27 in the same specialty as the license holder who is the subject of

1 the complaint or in another specialty that is similar to the license
2 holder's specialty.

3 (b) The expert panel shall report in writing the panel's
4 determinations based on the review of the complaint under
5 Subsection (a). The report must specify the standard of care that
6 applies to the facts that are the basis of the complaint and the
7 clinical basis for the panel's determinations, including any
8 reliance on peer-reviewed journals, studies, or reports.

9 Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW.

10 (a) A license holder on an expert panel authorized by Section
11 255.0065 who is initially selected to review a complaint shall:

12 (1) determine whether the license holder who is the
13 subject of the complaint has violated the standard of care
14 applicable to the circumstances; and

15 (2) issue a preliminary written report of that
16 determination.

17 (b) A second expert reviewer shall review the first expert
18 reviewer's preliminary report and other information associated
19 with the complaint. If the second reviewer agrees with the first
20 reviewer, the first reviewer shall issue a final written report on
21 the matter.

22 (c) If the second expert reviewer does not agree with the
23 conclusions of the first expert reviewer, a third expert reviewer
24 shall review the preliminary report and information and decide
25 between the conclusions reached by the first two reviewers. The
26 final written report shall be issued by the third reviewer or the
27 reviewer with whom the third reviewer concurs.

1 (d) In reviewing a complaint, the expert reviewers assigned
2 to examine the complaint may consult and communicate with each
3 other about the complaint in formulating their opinions and
4 reports.

5 SECTION 5. Subchapter C, Chapter 256, Occupations Code, is
6 amended by adding Section 256.106 to read as follows:

7 Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. The
8 board may delegate authority to board employees to issue licenses
9 under this subtitle to applicants who clearly meet all licensing
10 requirements. If the board employees determine that the applicant
11 does not clearly meet all licensing requirements, the application
12 shall be returned to the board. A license issued under this section
13 does not require formal board approval.

14 SECTION 6. Chapter 263, Occupations Code, is amended by
15 adding Sections 263.0065, 263.0076, and 263.0077 to read as
16 follows:

17 Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT
18 DISPOSITIONS. (a) The board may delegate to a committee of board
19 employees the authority to dismiss or enter into an agreed
20 settlement of a complaint that does not relate directly to patient
21 care or that involves only administrative violations.

22 (b) The disposition determined by the committee must be
23 approved by the board at a public meeting.

24 (c) A complaint delegated under this section shall be
25 referred for informal proceedings under Section 263.0075 if:

26 (1) the committee of employees determines that the
27 complaint should not be dismissed or settled;

1 (2) the committee is unable to reach an agreed
2 settlement; or

3 (3) the affected license holder requests that the
4 complaint be referred for informal proceedings.

5 Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE. (a)
6 If an informal settlement conference will be held under Section
7 263.0075, notice of the time and place of the conference must be
8 given to the license holder not later than the 45th day before the
9 date the conference is held.

10 (b) The notice required by Subsection (a) must be
11 accompanied by a written statement of the specific allegations
12 against the license holder and the information the board intends to
13 use at the informal settlement conference. If the board does not
14 provide the statement or information when the notice is provided,
15 the license holder may use that failure as grounds for rescheduling
16 the conference.

17 (c) The license holder must provide to the board the license
18 holder's rebuttal not later than the 15th day before the date of the
19 conference in order for that information to be considered at the
20 conference.

21 (d) On request by a license holder under review, the board
22 shall make a recording of the informal settlement conference. The
23 recording is a part of the investigative file and may not be
24 released to a third party unless authorized under this subtitle.
25 The board may charge the license holder a fee to cover the cost of
26 recording the conference. The board shall provide a copy of the
27 recording to the license holder on the license holder's request.

1 Sec. 263.0077. REMEDIAL PLAN. (a) The board may issue and
2 establish the terms of a remedial plan to resolve the investigation
3 of a complaint filed under this subtitle.

4 (b) A remedial plan may not contain a provision that:

5 (1) revokes, suspends, limits, or restricts a person's
6 license or other authorization to practice dentistry or dental
7 hygiene; or

8 (2) assesses an administrative penalty against a
9 person.

10 (c) A remedial plan may not be imposed to resolve a
11 complaint:

12 (1) concerning:

13 (A) a patient death;

14 (B) the commission of a felony; or

15 (C) a matter in which the license holder engaged
16 in inappropriate sexual behavior or contact with a patient or
17 became financially or personally involved with a patient in an
18 inappropriate manner; or

19 (2) in which the appropriate resolution may involve a
20 restriction on the manner in which a license holder practices
21 dentistry or dental hygiene.

22 (d) The board may not issue a remedial plan to resolve a
23 complaint against a license holder if the license holder has
24 previously entered into a remedial plan with the board for the
25 resolution of a different complaint filed under this subtitle.

26 (e) The board may assess a fee against a license holder
27 participating in a remedial plan in an amount necessary to recover

1 the costs of administering the plan.

2 (f) A remedial plan is public information.

3 (g) In civil litigation, a remedial plan is a settlement
4 agreement under Rule 408, Texas Rules of Evidence.

5 (h) The board shall adopt rules necessary to implement this
6 section.

7 SECTION 7. Not later than December 1, 2013, the State Board
8 of Dental Examiners shall adopt rules necessary to implement the
9 changes in law made by this Act.

10 SECTION 8. Sections 254.006(b) and 255.006, Occupations
11 Code, as amended by this Act, and Sections 255.0065, 255.0066,
12 255.0067, 263.0076, and 263.0077, Occupations Code, as added by
13 this Act, apply only to the investigation and resolution of a
14 complaint filed with the State Board of Dental Examiners on or after
15 January 1, 2014. A complaint filed before that date is governed by
16 the law in effect on the date the complaint was filed, and the
17 former law is continued in effect for that purpose.

18 SECTION 9. (a) Except as provided by Subsection (b) of this
19 section, this Act takes effect January 1, 2014.

20 (b) Section 7 of this Act takes effect September 1, 2013.